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HOW TO KEEP CONVENTION RECORDS

H. A. TOULMIN

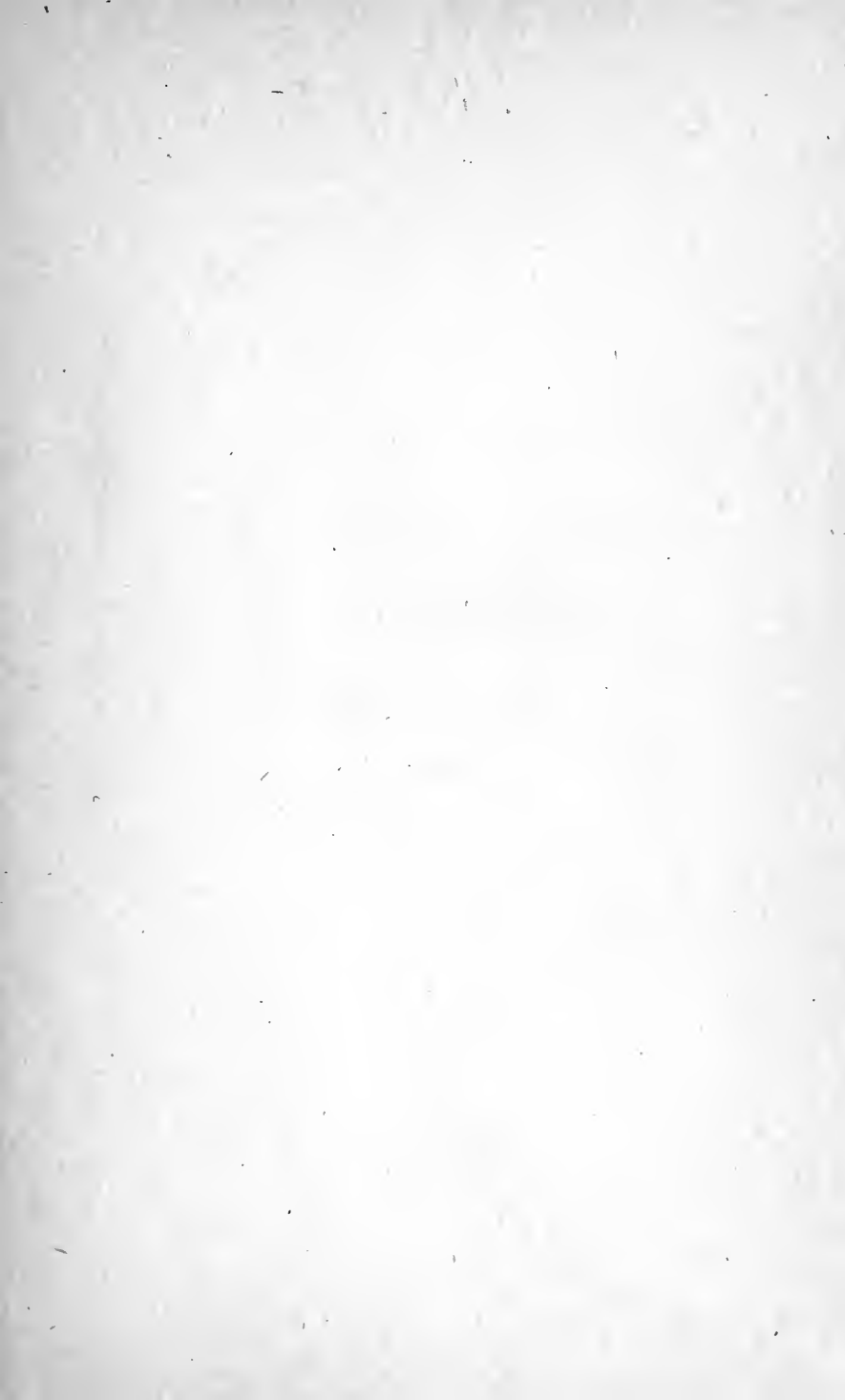


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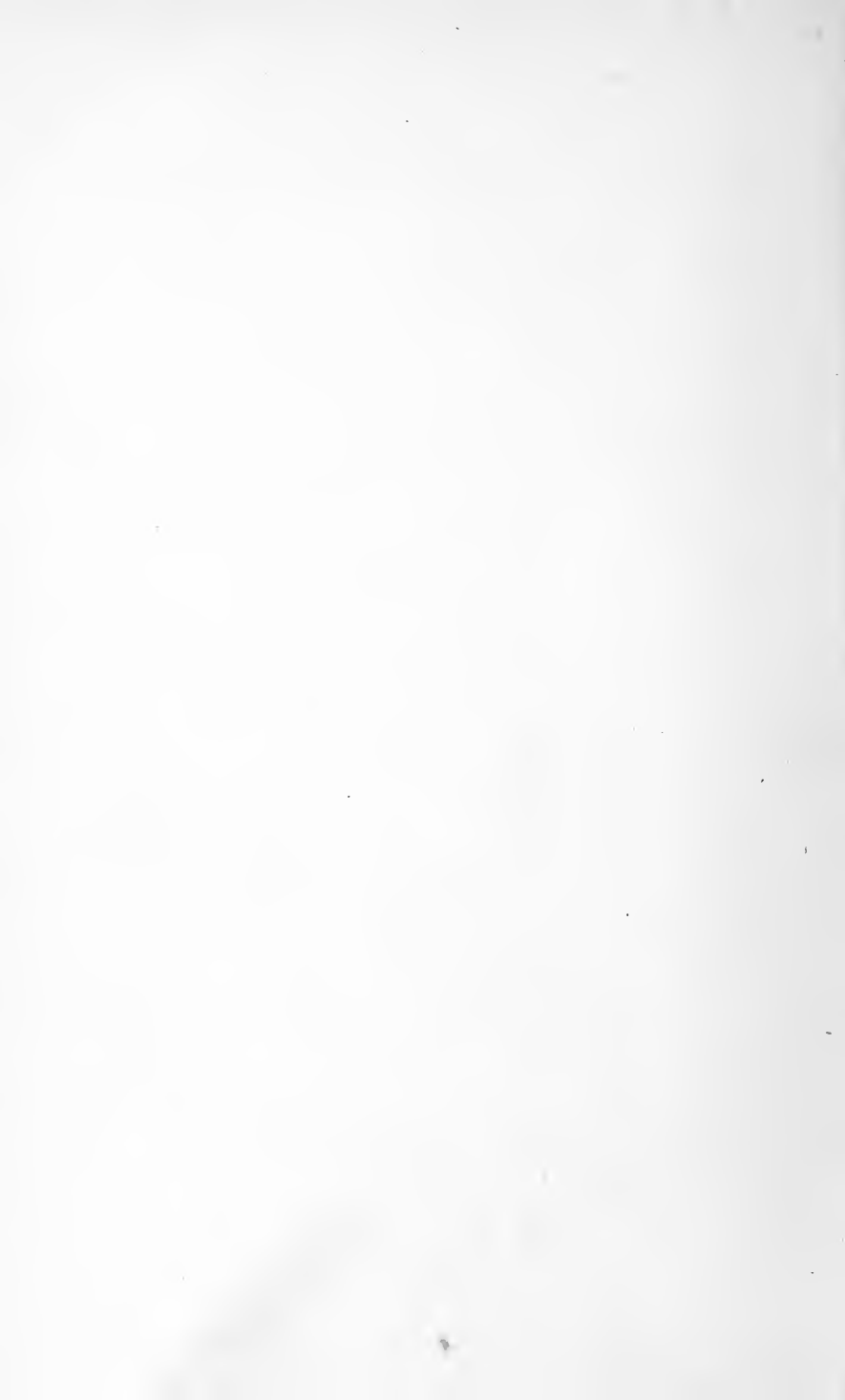
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HOW TO KEEP INVENTION RECORDS



HOW TO KEEP INVENTION RECORDS

TOGETHER WITH AN EXPLANATION OF
THE NATURE OF INDUSTRIAL PROPERTY

BY

copy
HARRY A. TOULMIN, JR., J.D., LITT.D.

MEMBER OF THE FIRM OF TOULMIN AND TOULMIN; MEMBER OF THE BAR OF
THE SUPREME COURT OF THE UNITED STATES, THE BAR OF OHIO, ETC.;
FOREIGN MEMBER OF THE CHARTERED INSTITUTE OF PATENT
AGENTS (GREAT BRITAIN); FELLOW OF THE ROYAL STA-
TISTICAL SOCIETY OF ENGLAND; MEMBER OF THE
FRANKLIN INSTITUTE OF MECHANIC ARTS, ETC.

WITH AN INTRODUCTION BY

JAMES T. NEWTON

SOMETIME UNITED STATES COMMISSIONER OF PATENTS



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TO THE MEMORY OF
HARRY T. TOULMIN
LATE UNITED STATES JUDGE, SOUTHERN DISTRICT OF ALABAMA
1838-1917



PREFACE

The purpose of this book is an educational one. The long experience of my firm as patent counsel over a period of thirty years has emphasized the necessity of a written explanation, not merely a verbal one, in presenting to members of the bar, inventors, and corporations owning inventions, either with or without patent departments, *the grave necessity of adequate records* of their valuable industrial property, known as inventions, the monopoly of which they are seeking for a period of years.

It is the earnest desire of the Bench, the Bar, and business men to prevent litigation wherever possible. It has been my experience that when adequate proof of the prior right of a party can be produced in readily available form with no doubt as to its authenticity, much litigation can be avoided before passion and prejudice plunge the respective parties into expensive and many times unnecessary legal disputes.

Where litigation cannot be avoided, thousands of dollars are lost annually by the failure of inventors and their associates to keep adequate records of their inventions, their development and reduction to practice, and early commercial history. These decisive events must be proved in the course of litigation. If they cannot be proved at all in varying ways and in varying degrees, the case will be lost; if they are proved at all, the failure

to keep records necessitates roundabout ways of making this proof which may not only be unsatisfactory, but is usually highly expensive.

This expense is unnecessary if adequate records are kept of the essential steps and their dates in connection with inventions. That is the purpose of this book.

In the first part of the book the general nature of industrial property and monopolies granted to protect it are discussed; in the second part, a practical method of insuring this recording of dates is presented in a series of a dozen forms. A final chapter deals with the methods of patent investigations.

HARRY A. TOULMIN, JR.

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INTRODUCTION

The prevention of litigation is the primary object of the conscientious lawyer, but in the field of industrial property, where many minds are struggling for new and better things in widely separated territories, litigation cannot be always avoided.

Priority of invention or use is the basis of governmental grants of monopolies, and most of the litigation over industrial property has for its object the determination of who was the first inventor or user of the thing in litigation.

In this country the first to use the trade-mark, in some other countries the first to register, is the legal owner, and it is a simple proceeding to determine this matter if parties have preserved records of their first and continuous use.

In the case of inventions the matter is more complicated because they are ordinarily first conceived but must be reduced to practice before they are legally complete. It frequently happens that "A" may be the first to conceive an invention but "B" the first to reduce to practice. It is then sometimes difficult to determine who is the first inventor, but if "A" and "B" have kept accurate records of each step taken in the development of their respective inventions, the technician can usually advise which is entitled to a patent.

The author of this book has clearly stated the nature

of industrial property and formulated a system, founded on the statutes as interpreted in numerous court decisions, accurately to determine the first user or inventor, and if his instructions are followed, justice with the minimum of litigation will result. Hence this volume is heartily commended to those contemplating entering the field of industrial property.

JAMES T. NEWTON.

HOW TO KEEP INVENTION RECORDS



HOW TO KEEP INVENTION RECORDS

CHAPTER I

PROTECTION OF INDUSTRIAL PROPERTY

MONOPOLIES GRANTED BY GOVERNMENTS

The Congress shall have power: . . .

To promote the progress of Science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries:

(Constitution of the United States, Art. I, Sec. 8.)

Industrial property is a term covering the whole field of property rights protected by the government through monopolies granted for terms of years. The subject of these monopolies is industrial property. The monopolies are secured to their owners by government grants awarded on stipulated conditions.

The grants themselves, protecting industrial property, are variously termed patents, trade-marks, and copyrights, which designations include variations of any one of these classes.

How may these monopolies be secured and how enforced? What are the remedies against commercial pirates who prey upon the industrial property of their competitors rather than rely upon legitimate methods of

commercial competition? What measures do governments extend for protection against such practice?

Only a definition of the boundaries of the subject and a statement of the principles of the protection of industrial property can be touched upon here to give a background for the patent records that follow; it must be left to highly-trained specialists to carry out the actual practice of protecting this type of property in all its details.

This chapter will only attempt to outline the situation in a way that the writer has found by frequent consultations with clients to be of value to them.

For the purpose of discussing this extensive field of the protection of industrial property, assume this typical instance of a corporation, manufacturing a new product, to be marketed in the United States, the North and South Americas, and in other foreign lands, making its plans for protection open to the corporation at home and abroad. Further, assume that the corporation is manufacturing a commodity which is a product of the mechanical, electrical, and chemical arts, for instance a soap; that to manufacture this commodity, a new process must be used; that the commodity is marketed with the trademark of the corporation indicating the origin of the goods, and the goods are shipped throughout the world; assume that the box in which the commodity reaches the ultimate consumer bears the distinctive labels of the firm; that the distinctive mark of the house is used in the form of "prints" employed in advertising, but not attached to the goods directly nor to the cartons containing the goods; and that books of instruction explaining the uses of the commodity accompany it.

All these things are the product of the exclusive energy, genius, ingenuity, and creative thought of the new organization made possible through its financial resources and the activity of its personnel.

THE MANUFACTURERS' QUESTION

The signal question immediately arises, what, if any, part of this exclusive property can be taken by the corporation's competitors or by any of the general public? What protection does the government of the United States afford, and what protection do foreign governments afford, for these articles of industrial property brought into being by this corporation? Can competitors imitate, and, if so, to what extent can they imitate the product, its dressings, the form in which it is delivered to the public, the advertising, the sales methods, and even the appearance of the article itself?

I. PATENTS

The first question which will arise will be that of patent protection. Patents are variously divided into those known as mechanical patents or patents covering machines, patents for a process or method of producing a particular product, patents for chemicals or compositions of matter, and patents for designs to protect in an exclusive way specific configurations of ornamental character.

To summarize the classes of patents:

1. Mechanical
2. Process or art
3. Composition of matter (chemical)
4. Design.

Probably the machinery used in this particular corporation to produce the soap would be the first consideration. How can this machinery be protected? The procedure would be to secure patents on the mechanism, or mechanical patents.

After having passed by the question of protecting the machinery for producing a soap, then the question would arise whether or not the process by which the soap was made could be protected. In the making of soap the various machines employed, for the patenting of which we have already provided, would probably be used in series, each one carrying out a correlated and coördinated step in the method of producing the final product of the finished soap. Step by step, from machine to machine, this process would progress, until the finished article, ready for consumption, was finally secured. The machines employed in the manufacture of soap and employed in this process, would probably be electrically driven and would involve the application of heat, light, electricity, chemistry, pneumatics, hydraulics, etc. Some of the operations in producing the soap would have to be guided or performed by hand, while others would be performed by machines of more or less automatic nature. The series of steps so related would be a process and, consequently, patentable. "The generic definition of the process is, 'an operation performed by rule to produce a result.'"¹

The soap itself is a product of an ingenious chemical compound, we may well assume, and is, therefore, entitled to ample protection. A patent or patents will be

¹ Walker on *Patents*, 4th ed., p. 3.

granted to protect the corporation in its ownership of the compounds or formulae which represent the various combinations of material which, when taken together, represent the completed product. The term "composition of matter," is inclusive of all composite articles which are the union of two or more ingredients, irrespective of whether this union is a chemical one, a mechanical one, or whether the elements so combined are in the form of gases, liquids, or solids. A composition of matter is patentable providing, of course, that it is eligible under the rules provided for the granting of patents.

The soap itself may be turned out with a certain design upon each cake or bar, or a specific configuration or shape which is both novel and ornamental. Such a design is valuable because it lends some artistic quality to the product, makes it attractive to the purchaser in the aesthetic sense, and lends a certain distinction to the manufacturer's offering to the public. A design patent would protect this feature.

Design patents have been defined variously, but no definition is, perhaps, more apt than the definition of the Circuit Court of Appeals for the Second Circuit, in *Howe v. Blodget & Clapp Co.*² No Court of Appeals in the United States has had more experience or has passed with greater learning and care upon patent questions than that of the Second Circuit; a definition from that Court is particularly helpful, and especially so in this case because the Court adopted the definition of Judge Townsend, sitting on circuit, who spoke as follows:

² 112 Fed. 61.

Patents for designs are intended to apply to methods or ornament, in which the utility depends upon the pleasing effect imparted to the eye, and not upon any new function. . . . Design patents refer to appearances, not utility. Their object is to encourage works of art and decoration which appeal to the eye, to the aesthetic emotions, to the beautiful.

Further, the structure for a design must be unitary, must be ornamental as opposed to the useful qualification of mechanical patents, and must, of course, be novel. An article cannot both be copyrighted and be the subject of a design patent. "The author or owner is driven to his election and must stand by his choice."³ In the case of trade-marks, if the subject of a design patent is identical with the subject matter covered by a trade-mark, the Patent Office has decided that when a certain device has had a design patent issued to cover it, the Office will not grant another registration for the same design as a trade-mark, because that would impair the right of the design patentee.⁴ If a design patent has expired, then its subject matter may be registered as a trade-mark, provided, of course, that the trade-mark statutes are complied with.⁵ It has been held that "the designer of articles of manufacture not otherwise entitled to receive design patents, cannot justify the issuance of such patents on the theory that the design is a trade-mark."⁶

No attempt is made in this discussion to define inven-

³ *Louis De Jonge & Co., v. Brenker & Kessler Co.*, 182 Fed. 150.

⁴ *Lee & Shepard*, 24 O. G. 1271.

⁵ *King*, 46 O. G. 119.

⁶ *Rowe v. Blodgett, etc., Co.*, 112 Fed. 61; *Coates et al v. Merrick Thread Co.*, 149 U. S. 562.

tion either inclusively or exclusively, because that is a matter for specialists highly trained in the technical rules of patent practice. The sole object of this chapter is to outline what protection the governments afford, without making any attempt to discuss the multitude of technical rules which govern the granting in specific instances of particular protection.

The corporation now has, we may assume, material for mechanical patents, process patents, composition of matter patents, and design patents, and has thus proceeded to the protection of such property.

A patent is an exclusive grant or monopoly awarded to an inventor or author in return for his making known and, therefore making available to the public, his discovery, or creation. This exclusive right for the specified term of years is the exclusive right to make, use, and sell. The exclusive right to make, use, and sell is the cardinal trinity, the quality of which is defined by the word *exclusive*. The patent law does not give the right merely to make, use, and sell, because that is presumably inherent in the production of the article, but what the patent law does give is the beneficial *exclusive* privilege.⁷

The term of mechanical, process, and composition of matter or chemical patents is seventeen years of the exclusive privilege to make, use, and sell the subject matter covered by the particular patent. Different terms are provided for design patents; they are granted for the varying terms of three and a half, seven, and fourteen

⁷ U. S. R. S. 4884.

years, as the applicant may, in his application, elect.⁸

Inventions may be invented by one man or by several. If by one man, it is known as a sole invention; if by more than one, it is known as a joint invention. Great care and caution should be exercised before the application for the patent is filed to determine the exact nature of the inventorship, whether sole or joint, because, unless this is properly determined, it may lead to a defeat of the application or patent. Many corporations employing a number of inventors amongst whom there is considerable rivalry have experienced a great deal of difficulty in determining exactly who were the inventors. It is highly essential that this be determined with great care.

As to what person may apply for and receive a patent for his invention or discovery, it is best to quote the language of the statute, which says:

Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof.⁹

The patent may be obtained provided that the invention has not been known or used by others in this country before the invention or discovery thereof, and provided it has not been patented or described in any printed publication in this or any foreign country, before the invention or discovery thereof, or more than two years prior to the filing of the application; and provided, further, that the subject matter of the application has not been in public

⁸ U. S. R. S. 4931; Patent Office Rules No. 80.

⁹ U. S. R. S. 4886.

use or on sale in this country for more than two years prior to the application, unless the same is proved to have been abandoned. Upon this same question, it is to be observed that no person will be barred from receiving a patent for his invention nor will have his patent declared invalid, when the invention has been patented by him or his assignee in a foreign country, unless the application filed in the foreign country was filed more than twelve months prior to the filing of his application in the United States. The time of twelve months is shortened to four months in the case of designs.¹⁰

The method of applying for a patent is to state fully and clearly the exact nature of the invention in what is known as a specification, illustrated by proper drawings, and the exact nature of what the inventor believes to be his exclusive property being defined by what is known as claims. Claims define the boundaries of the monopoly. No legal instrument requires more learning and skill to draw properly than a patent claim. The preparing and prosecution of an application is a matter for highly-trained specialists.

A provision is made for reissue of a patent under certain conditions, some of which are the reissue of a patent which is inoperative or invalid by reason of a defective or insufficient specification or by reason of the patentee claiming more than he had a right to claim, provided the error has occurred by reason of inadvertence, accident, or mistake, without any fraudulent or deceptive intent. It is a matter of considerable difficulty, usually, to have patents reissued, and when they are reissued, they fre-

¹⁰ U. S. R. S. 4887.

quently involve a great many technical questions, so that it is, altogether, a matter to be avoided, if possible. It is rare that the patent is ever reissued when more than two years have elapsed. Then, too, if during the interval before the patent is reissued, any rights of other parties have intervened, that may prove a vital stumbling block to the securing of the new patent. Extensions are granted only by act of Congress, a matter too cumbersome for use except in the rarest cases.

The invention and the application for the patent may be assigned in whole or in part, or rights under patents may be granted by means of a license.¹¹ The interests may be invested in assignees, in grantees of exclusive territorial rights, in mortgagees, and, as has been pointed out, in licensees. Definitions of the kinds of interests so acquired by these transfers are best set forth in Patent Office Rule No. 196:

(1) An assignee is a transferee of the whole interest of the original patent or of an undivided part of such whole interest, extending to every portion of the United States. The assignment must be written or printed and duly signed.

(2) A grantee acquires by the grant the exclusive right, under the patent, to make, use, and vend, and to grant to others the right to make, use, and vend, the thing patented, within and throughout some specified part of the United States, excluding the patentee therefrom. The grant must be written or printed and be duly signed.

(3) A Mortgage must be written or printed and be duly signed.

(4) A licensee takes an interest less than or different

¹¹ U. S. R. S. 4895 and 4898.

from either of the others. A license may be oral, written, or printed, and if written or printed, must be duly signed.

The government requires in the way of fees, \$15 at the time of filing the application and \$20 upon allowance of the application. This \$20 is payable any time within the six months from the date of allowance.¹² This applies to all patents except design patents. Fees for design patents vary with the term of years for which they are granted. They are, for the three years and six months, \$10; seven years, \$15; and for fourteen years, \$30. On the application for reissue of a patent, the fee is \$30.

At this point, it might not be out of place to caution that marking carefully, with the word "patented" and the day and year of the patent, machines embodying the invention covered by the patent, to identify the patent with the machines manufactured under it, is essential. Further, and perhaps more important still, great care should be used to mark only machines which actually embody the invention for which the patent is issued. False marking is a serious matter and may subject the person who so marks to embarrassing difficulties. The marking is valuable because it gives notice to the public of the fact that the machine, or whatever it may be, which is the subject of the patent, is actually patented. This acts as a warning and is useful in case of a suit, because no specific notice is then necessary from which to date a recovery for the invasion of the monopoly.¹³

We have now proceeded with the protection of the

¹² U. S. R. S. 4885 and 4934.

¹³ U. S. R. S. 4900 and 4901.

business of the corporation we have in mind to a point where we have patents applied for or granted which will protect the machinery, the process of producing the product, or the art or method of producing it; the chemical composition or union of the various elements which go into the making of the soap; and the design of the finished article itself. So much for the manufacturing end.

But what of the distribution and sales end of the business, what of the protection against commercial pirates imitating this product in form, in design, in labels, in wrappings, in boxes, in cartons, in advertising, etc., in which and through which the product may become known to the general public, who have no means of knowing that this article is the article produced by the particular company except through these distinctive dressings, wrappings, and advertising used by the company to designate its product.

The means of protection of this kind of industrial property are found in trade-marks, labels, prints, and copyrights.

II. TRADE-MARKS

A trade-mark is "the commercial substitute for one's autograph."¹⁴ It is an arbitrary, distinctive mark or designation, indicating the origin and ownership of the goods to which it is attached or the cartons in which the goods are sold.¹⁵

In this business of marketing soap, the trade-mark

¹⁴ *Leidersdorf v. Flint*, Fed. Cas. No. 8219.

¹⁵ *Standard Paint Co. v. Trinidad Asphalt Mfg. Co.*, 220 U. S. 446; *Elgin National Watch Co. v. Illinois etc. Co.*, 179 U. S. 665.

could be impressed upon the soap itself or printed upon the wrappings of the soap or on the boxes containing it. It could be used in all these ways. It could be used in the advertising, in the trade literature of the concern, and in all the various ways that might occur to the ingenious sales manager in identifying the high quality of his product with this distinctive mark, so that a purchaser once having used soap of this character which he found satisfactory would have a ready means of calling for the same article again when he needed any additional supply.

Who may register a trade-mark? A trade-mark may be registered by any person, firm or corporation or association domiciled within the territory of the United States or residing or located in any foreign country, which, by treaty, etc., affords a similar privilege to the citizens of the United States, and who is the owner of such trade-mark and uses it in commerce with foreign countries or in interstate commerce.¹⁶ Further, the owner of a trade-mark residing or located in a foreign country but having a manufacturing establishment within the United States may register his mark for the products of such establishment upon complying with the proper provisions of the law.¹⁷

What may be registered as a trade-mark? A trade-mark must be a distinctive device, word, or phrase of identification, arbitrary in character and not merely descriptive of the goods to which it is attached. It must not be of improper character, or consist of or comprise

¹⁶ Act of February 20, 1905, 1 and 29.

¹⁷ Act of May 4, 1906, 3.

the flag of the United States or any of the emblems of the political sub-divisions thereof or of any foreign nation, or the emblem of any fraternal society unless in the last case proof of prior adoption can be shown to the satisfaction of the Commissioner of Patents. The trade-mark must not be registered or a non-registered trade-mark owned and in use by another and appropriated to merchandise of the same descriptive properties as that of the applicant, because, if the trade-mark were granted to the applicant, it would be likely to cause confusion or mistake in the minds of the public or deceive purchasers. The mere name of an individual, firm, corporation, or association which is not printed or written, impressed or woven in some particular manner or in association with the portrait of an individual, is not eligible to registration. Geographical terms cannot be registered. Portraits of living individuals cannot be registered as trade-marks except on the written consent of such individuals.¹⁸

The trade-mark is registered by the filing of an application accompanied by five specimens of the mark as it is actually applied to the goods, and a drawing showing the mark. The application must state, amongst other things, the particular class of goods upon which the mark is to be applied. The U. S. Patent Office has divided all products into fifty classes. Then the particular kind of merchandise in that particular class must be set forth, with a statement as to how the mark is applied and affixed to the goods, and the length of time during which the trade-mark has been used upon the goods. The

¹⁸ Act of February 20, 1905, 5; and the Act of March 2, 1907, 5; Act of February 18, 1911, 5.

trade-mark must, of course, have been used in interstate commerce.¹⁹

Upon the allowance of the application, the mark will be published at least once in the Official Gazette issued by the Patent Office, and the publication shall be at least thirty days prior to the date of registration. If no one files a notice of opposition within thirty days after the publication, then a certificate of registration will be issued.²⁰ This opposition, if made, would consist in the filing of a statement showing that the mark did not belong to the person who was applying for registration of it, or that the mark was so similar to the opposer's mark that it would cause confusion in the minds of the public, etc.

The term for which the exclusive right to the mark is granted is twenty years, except in the case of trade-marks previously registered in a foreign country, in which case the protection ceases on the same day on which the trade-mark ceases to be protected in the foreign country. Certificates of registration may be renewed from time to time for periods of twenty years upon the payment of renewal fees.²¹

Even though a trade-mark may not be technically a trade-mark and, therefore, not registrable in the U. S. Patent Office, yet if that trade-mark was in use for ten years (see also the one-year provision in the Act of March 19, 1920) or more prior to February 20th, 1905, then that mark can be registered irrespective of its failure to com-

¹⁹ Act of February 20, 1905, 2; Act of February 18, 1909, 2.

²⁰ Act of February 20, 1905, 6.

²¹ Act of February 20, 1905, 12.

ply with the technical requirements of the trade-mark law.²²

The fees are \$10 for filing an original application, and \$10 for filing a renewal.

A number of states in the United States provide for registration of trade-marks. This state registration is comparatively inexpensive, and is of value because a registration in leading states like New York, Pennsylvania, Ohio, Illinois, etc., would prevent any infringer from using the same mark, because he would not be able to distribute the goods under that infringing mark in those states in which his commercial possibilities would be large. By using the state registration, even though in a few of the states, it is sufficient to break up any practical commercial plans of the infringer.

These trade-marks can only be assigned when the businesses which they identify are assigned. They cannot be assigned separately. The reason is apparent, because the vital point of the whole matter is that the trade-mark shall identify the business and is inseparable from it.

A very efficient form of protection in certain instances is the registration of the mark through the Treasury Department of the United States Government. It is provided that no article which shall bear a copy or simulation of a trade-mark registered in accordance with the provisions of the law in the United States, or an article which is manufactured in any foreign country or locality other than that in which it is in fact manufactured, shall be admitted to an entry at any customs house of the

²² Act of February 20, 1905 (as amended January 8, 1913), 5 (b).

United States. In order to aid the officers of customs to enforce this prohibition, any domestic manufacturer or trader or any foreign manufacturer or trader entitled to protection by a treaty, etc., can have a copy of the certificate of registration of his trade-mark recorded in the books of the Department of the Treasury. Facsimiles of the mark are to be furnished to the Secretary of the Treasury, which copies will be distributed to the customs houses or proper officers in the various ports of entry of this country. This has a practical meaning, in that it prevents the importation into this country of inferior articles of manufacture by outsiders who cannot be reached for infringement of the trade-mark under which they are shipping the goods into this country and deceiving the public by the unauthorized use of a domestic trade-mark or a simulation of it.²³

The trade-mark must be marked by a notice of registration in the U. S. Patent Office. The same rule in regard to notice and its advantages applies to trade-marks as to patents.²⁴

III. LABELS

A label is a special form of designation identifying the product, and usually bears the name of the article and of the maker or seller, with the address; and sometimes directions for the use thereof. The label must be suggestive of its relations to the article to which it is attached or connected.

This is a wise requirement in view of the fact that it

²³ Act of February 20, 1905, Sec. 27.

²⁴ Act of 1905, Sec. 28.

must be impressed or stamped directly on the article or upon its container. This fact is the essence of its character. The fee for recording is \$6; there is no final fee.

The term of exclusive protection shall be twenty-eight years with the privilege of renewal.²⁵

IV. PRINTS

A print is "an artistic representation or intellectual production not borne by an article of manufacture or vendible commodity, but in some fashion pertaining thereto, such, for instance, as an advertisement thereof."²⁶ The print is used as a decorative emblem or artistic representation which the company will employ upon its advertising, in its trade literature, in its circulars, and in its publications which describe its product and its use. It must refer to the article which it advertises, although it need not be attached to it. Like the label, it is related to the copyright law, and like the label is copyrightable. The term of registration of a print is twenty-eight years, and the fee for filing an application is the same as that of the label. The print and label are registered in the Patent Office even though the act pertaining to them is a part of the old copyright law. The print is primarily an artistic representation, and is distinguished from the label by not being borne by the article of manufacture or its container as the label would be. It is used in the advertisement of the article primarily. Its purpose is to protect the public in its purchase by advertisement in con-

²⁵ Act of June 18, 1874; and Act of March 4, 1909.

²⁶ *Ex parte* Bowles, 97 O. G. 2308.

nection with goods of acknowledged standard. It must not be connected absolutely with the fine arts, for then it would be subject to copyright only, but it must have some artistic quality as well as a commercial character.²⁷ Both prints and labels may be assigned by an instrument in writing signed by the proprietor. Either an individual, a firm, or a corporation or the representatives of such applicants can apply for registration of the print or label.

V. COPYRIGHTS

The copyright act gives to the author the exclusive right to print, reprint, publish, copy, and vend his copyrighted work for the period of twenty-eight years with renewal privilege for similar periods.

The particular interest of copyright in our illustration is the copyright of the manuals of instruction, or the books of description of various uses of the soap. The literature of the corporation may consist of booklets or pamphlets describing the process by which the soap is made, or the particular factory in which it is made, or any other matter of interest which the corporation may desire to put before the public. These booklets, pamphlets, etc., can be copyrighted. Any photographs, prints, and pictorial illustrations can be copyrighted. Likewise, as is becoming the modern custom amongst large corporations, moving pictures of scenes about the plants or of the process of its manufacture are being taken. These moving pictures can be copyrighted as well as motion picture photoplays which are taken in and about the plant; they are now largely used for advertising commercial institu-

²⁷ Act of June 18, 1874; and Act of March 4, 1909.

tions. Likewise drawings or plastic work of a scientific character, works of art, models or designs of works of art, and reproductions of works of art can be protected.²⁸

Under the Act of 1909, the method of securing copyrights is as follows: The publication has placed upon it the notice of copyright, giving the word copyright, or some similar designation, followed by the year and the name of the copyright proprietor. The book or pamphlet is published; this initiates the copyright. Then the application for copyright is filed, giving the date of publication and other pertinent matters required. Then the certificate of registration for the copyright will issue. The Act of 1909 is peculiar in that the copyright notice is placed upon the book, etc., and the book is distributed to the public before the registration is actually granted.

FOREIGN PROTECTION

We now come to the problem of the corporation distributing its goods in foreign countries.

It is unwise for any corporation which has a product worthy of its name to distribute its product in foreign countries unless it has some measure of patent or trademark, or possibly copyright protection, or all of them, if possible, provided, of course, it is permissible to secure such protection. When it is possible, it is poor business judgment not to secure such protection in the countries into which the products will go. This is true for two reasons: first, because of the monopolistic protection afforded which can be enforced by legal means; and, sec-

²⁸ Act of March 4, 1909.

ond, because of the monopolistic protection afforded by the warning notice of registration, which is, in effect, a moral means. The latter has been found, in many cases, to be most effective to deter unscrupulous individuals from appropriating the property of those to whom it rightfully belongs, but who are located at a distance from the point of distribution in the foreign country.

Foreign patents can be obtained generally under the International Convention. The question of foreign patents should be taken up at once upon the filing of the applications for patents in the United States. The question can then be disposed of with safety and with opportunity to comply with the provisions of the foreign laws and international agreements. No attempt will be made here to go into the technicalities of this procedure.

Particularly necessary is the registration of trade-marks in foreign countries, because goods are so largely bought in those countries by reason of distinctive marks. The mark is particularly effective in use in Latin and Oriental lands. The trade-mark adopted should be designed so that it will be readily pronounceable or useable in foreign countries in which a language other than English is spoken. In some cases the trade-mark has to be registered in the United States first before it can be registered in foreign countries; in other cases this is not necessary. The provisions of foreign laws are very technical and require a thorough knowledge of local conditions to understand and interpret them. Various requirements for legalizations, actions of certain consuls, etc., make the matter one of great care. Manufacturers from time to time are misled into signing powers of at-

torney in foreign languages which bring great disaster upon them because the powers confer a degree of authority which the manufacturer would not consent to if he had understood the language of the power. The rule in many countries, principally in South American countries, is that the first to register a mark, is the owner and can keep all others from using that mark. In the United States the rule is to the contrary; namely, that the registration of the mark is only *prima facie* evidence of ownership, and if the real owner can prove his prior title to the mark, he can defeat the registration and exert his exclusive right to it.

This foreign rule works to the great loss of many manufacturers who send their goods into foreign countries, if they have not registered their mark, because some enterprising commercial pirate, as is frequently the case, seeing the prospects of the concern coming into that country, registers the mark in his own name before the goods are sold in that particular locality. The pirate gambles on the chance of holding up the manufacturer when he starts to distribute his goods, because usually a penalty in the shape of a fine, or even imprisonment, is attached to sending goods into a country under a mark which belongs to another. The pirate, having secured registration of the mark belonging to the American manufacturer, awaits his opportunity when the manufacturer imports the goods. The goods having been shipped into that country, the manufacturer is confronted with the fact that his mark is owned by another in a technical sense, and in a sense which will be enforced by the laws in that foreign country. He either has to use a new mark or

buy off the man who has perpetrated what is a moral fraud. This has been the actual experience of a number of manufacturers.

The conclusion to be reached in this foreign matter is that if the manufacturer is going into foreign fields, or has prospects of going into foreign fields, he should look to his foreign protection in the early stages of the business.

The foregoing discussion outlines the various forms of protection which a corporation or an individual or a partnership engaging in business involving industrial property may secure.

The monopolies frequently grow to great values.

The wise provision of the United States statutes for the protection of industrial property has been the cornerstone for the building of our industrial and commercial prosperity. The provisions of these laws are such as to encourage the creation and invention and discovery of things useful to the public, which are granted the protection of temporary monopolies in favor of the inventor or owner or discoverer, in return for the corresponding benefit that the disclosure confers upon the public.

In the United States there are no working provisions, no compulsory license systems, no annual taxes or other burdens which are frequent and almost universal in foreign countries. In this lies a part of the explanation of our great activity in the field of industrial property and our signal leadership in the creation of remarkable machinery, chemical compounds, and ingenious devices generally, which have so widely benefited humanity, and in our literary and artistic creations as well.

CHAPTER II

RECORD FORMS

The numbered paragraphs in the following explanatory sections refer to the paragraphs of similar number on the corresponding forms. The instructions for making the entries in each of the paragraphs on the forms will be found in these explanations in this chapter.¹

The fundamental purpose of all records of inventions is to provide an unquestionable statement of exactly what occurred; hence, any additional details are always welcome to make certain and clear the record of the events as they transpire.

The accomplishment of this purpose will make it easy to prove the dates to prevent others from usurping that which belongs to the inventor or corporation. Sound proof of this character will prevent litigation, and if litigation does become necessary, makes success a certainty as far as it is humanly possible to make it.

¹ Large copies of these forms for record purposes may be obtained from the author, in care of Toulmin & Toulmin, Schwind Building, Dayton, Ohio.

FORM I
SUMMARY CARD

FORM I. SUMMARY CARD

ORDER NO.

Invention or Name of
Machine

1. Conceived, date of.....by.....
2. Disclosed, dates of.....
3. " To (1)..... How disclosed.....
4. (2)..... " "
5. (3)..... " "
6. Sketches, dates of.....
7. Written Description, date of.....
8. Working Drawings (a) Startedday of....19..
9. (b) Completed ..day of....19..
10. Started Full-Sized Machine.....day of.....19..
11. Completed Full-Sized Machine....day of.....19..
12. Photographs of:
13. Start of Full-Sized Device, taken.....day of...19..
14. Completion of Full-Sized Device, taken..day of...19..
15. Date Tested:
16. Where Tested:
17. Result of Test:
18. Remarks:
19.
20.
21.
22.
23.
24.

FORM I. SUMMARY CARD

1. Place here the date on which the idea took shape in your mind as a general conception of the invention. Record here the date as soon as possible after you conceive your invention. The name of the inventor or inventors should likewise be inserted.

2. After having gotten the idea worked out in your own mind, the next step is to tell another about it and explain the invention. The explanation should be sufficient to give the other person such an idea of your invention that, if you died suddenly, the invention would be in such form in the other person's mind or on the papers which you used to explain to him the invention that it could be carried out and reduced to practice as a practical machine, compound, etc., without you.

3, 4, 5. State here the name of the person to whom disclosed and how you disclosed the invention. Disclosure may be verbal, or by a sketch or by a demonstration of how the machine works or how the compound is mixed, with its results.

6. Sometimes sketches are used to illustrate the invention in the course of disclosure. Again sketches are made in the course of reducing the conception of the invention to practical form, preliminary to producing working drawings. In such a case the date of the sketches should be put upon the sketches themselves.

7. If the invention is complicated enough to necessitate

a written description, it is well to write out a plain description referring to the sketches by number and date and to the parts of the sketches by letters or numerals. This description should be sufficient to enable any one to understand your invention clearly.

8 and 9. The date when the working drawings are started should be recorded on the drawings themselves and recorded here on this record; likewise the completion of the drawings should be recorded. The working drawings are usually preliminary to the building of the full-sized machine on a commercial basis.

10. Record here the date of the starting of the construction of the full-sized machine.

11. Record here the date of the completion of the full-sized machine.

12. The photographs should be taken of the machine at various stages, with the order number appearing on the card placed with the device being photographed so that it will show in the photograph. Describe here the various views taken. It is well to put the order number on the card, together with the date of taking the photograph, or put it on the machine or somewhere in the picture so that it will be included in the photograph.

13, 14. Record here the dates of starting and completing the construction embodying the invention by recording the dates of the photographs of the machine taken at those times.

15. When the machine is completed, it should be tested at once. The date tested will be inserted here.

16. The place where it was tested, stating if it was tested in more than one place, should be inserted in this

blank. If it is a vehicle or similar equipment, then state the nature of the road on which it was tested, the distance, the speed, and over what highways the test occurred, so that proof of the condition of the highway may be made at a later date, if necessary.

17. The result of the test as to its success should be recorded here. Such items as to speed, production on the machine, effectiveness of the invention, etc., should all be recorded under the result of the test.

18 to 24. Other information relative to the machine can be recorded here on the summary card under "Remarks," with particular reference to commercial use, whether machines were built for others, the extent of production on the machines or extent of production of the compound if it is a chemical, food product, etc.



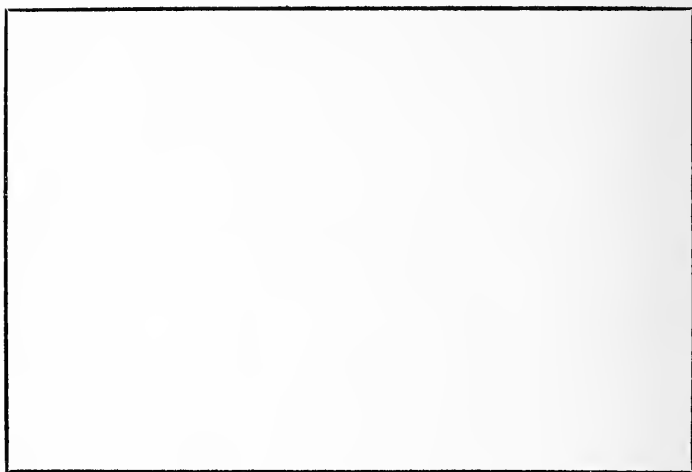
FORM II
PRELIMINARY SKETCH SHEET

FORM II. PRELIMINARY SKETCH SHEET

Order No.

1. Subject:

2.



3. Explanation:

.....

.....

.....

.....

.....

.....

4. Sketched by..... Date.....

5. Witnessed by..... Date.....

6. To Whom Explained..... Date.....

(a)

(b)

(c)

FORM II. PRELIMINARY SKETCH SHEET

On this sheet should be recorded first the order number at the upper right-hand corner.

1. The subject of the invention should be entered here.

2. In the square should be inserted a sketch of the idea or a record of the formula, if it is a compound. A number of these sheets may be used to illustrate various phases of the invention and various parts of it.

3. An explanation of the invention should be made in this space so that any one reading the sketch could refer to the explanation containing references by letters or numerals to the parts of the sketch, thus affording a complete understanding of the invention.

4. The signature of the inventor who sketched his ideas on the sheet should be put here, together with the date of making the sketch.

5. The signature of the person who witnessed the sketch should be inserted here, together with the date of signing his name.

6. The signature or names of the persons to whom the invention was explained should be inserted in this blank, together with the date on which the explanation was made to them.



FORM III
RESEARCH RECORD

FORM III. RESEARCH RECORD

ORDER NO.

1. Object:
2.
3.
4.
5. Apparatus:
6.
7.
8.
9. Materials:
10.
11.
12. Method or Process:
13.
14.
15.
16. Result:
17.
18. Experiment By: Date.....
19. Witnessed By: Date.....
20. Directed By: Date.....

FORM III. RESEARCH RECORD

In large concerns it is very important to have a laboratory record of the experiments which may result in inventions being made in the laboratory. For this purpose, a research record is provided, which I have found by personal experience to be a very valuable one to have.

The order number, which will follow the invention throughout its history, is inserted at the upper right-hand corner at the start of the experiment and beneath it is placed the subject.

1, 2, 3, 4. On these lines should be stated the object of the experiment and what the problem was that was being solved.

5, 6, 7, 8. Describe here, and sketch if necessary, the apparatus employed.

9, 10, 11. Insert here a record of the materials used and their quantities, temperatures, specific gravities, etc.

12, 13, 14, 15. Place here a complete description of the method or process of operating the apparatus, the employment of the materials, together with a statement of quantities and temperatures, so that any one can practice the invention or experiment after having read the description of the apparatus, materials, and methods. This is particularly important when a process or method is involved as distinguished from a purely mechanical invention. A method or process is an invention which may be produced irrespective of the particular apparatus

involved. The apparatus may be varied to suit the conditions, while the process in its essentials will remain the same.

16, 17. The results should be recorded here, giving facts in detail.

18. The experimenter should sign his name here and insert the date of the experiment. If it extends over more than one date, he should indicate the start and the completion of the experiment.

19. Any one who witnessed the experiment should insert his name here and the date.

20. The person who directed that the experiment be made and under whose direction the experiment was made, such as the director of a laboratory, should insert his name and the date here.

FORM IV
DRAWING FORM

FORM IV. DRAWING FORM

1. Supersedes Drawing dated
2. Superseded by Drawing dated
3. Name of Job.....15. Order No.
4. Part16. Shop No.
5. Tool17. Storeroom No.
6. Operation18. Planning Room No.....
7. Drawn by12. Traced by.....19. Tracing Checked by.....Date
8. Drawing Started13. Tracing Started.....20. Tracing Approved byDate
9. Drawing Completed.....14. Tracing Completed21. Copies to:
10. Drawing Checked by..... Date
11. Drawing Approved by..... Date22. Sheet No.

FORM IV. DRAWING FORM

This form continues the order number at the upper right-hand corner.

The purpose of the form is to have on each sheet of working drawings a complete dated record constituting its history.

1. At the top of the form is a space to show what the drawing supersedes, so that it may be known what mechanism that is shown in the drawing is designed to take the place of.

2. This is a space for inserting the name and date of the drawing which supersedes the one which is being made as that event occurs in the future course of business.

3. The name of the job, such as the name of the entire machine, is inserted here.

4. The particular part which is being illustrated is described here.

5. The tool which may be employed to turn out this particular part is noted here.

6. The operation which is proposed in connection with this particular part is described here.

7. The person who makes the drawing puts his name in this blank.

8. The date of starting is inserted in this space.

9. In this blank the date of completion is inserted.

10. The person who checks it should put his initials

here, together with the date, in order to insure its accuracy.

11. The head of the drafting room, who approves the drawing, or the chief engineer, inserts his name and date here.

12, 13, 14, 19, and 20. A similar procedure, with respect to tracing — its checking and approval are inserted in these blanks.

15. In this blank is inserted the usual order number.

16. A shop number given to the piece is inserted in this blank.

17. If the storeroom has a number given to the piece for the purpose of ordering additional parts, the number will be inserted here.

18. If the planning room has a number given to the part, other than the shop number, then it should be inserted here.

21. In order to prove to whom copies have been given of this drawing, it is essential that the names of the persons receiving copies should be placed in this blank. This is very important as it shows who got a copy of the drawing. It is valuable to trace these copies in order to determine the origin of competitors' ideas in case of a contest.

22. The number of the drawing is inserted here.

The name of the inventor or the company under whose direction the work is being done is customarily inserted.

FORM V
MATERIAL PURCHASE RECORD

FORM V. MATERIAL PURCHASE RECORD

ORDER NO.

Material	Order Number	Order Date	Invoice Number	Invoice Date	Voucher Number	Voucher Date
1. Steel						
2. Castings						
3. Patterns						
4. Brass						
5. Iron						
6. Aluminum						
7. Alloys						
8. Wire						
9. Chemicals						
10. Paper						
etc., etc.,						

FORM V. MATERIAL PURCHASE RECORD

First Column.— The first step in reducing an invention to practice is to order your materials. To identify this order of materials with the particular invention, the order number identifying the invention should be inserted on this card in the upper right-hand corner. On each order for material the same order number should be inserted to tie the whole system of records together.

In the first column, beginning at the top, reading to the bottom, will be found a sample enumeration of possible materials. This can be varied to suit the particular case.

Second Column.— This contains the order number of the person or firm placing the order for the material. If possible the same order number should be inserted here as has been attached to this invention throughout its history. This is essential and by all means should appear some place on the order blank.

Third Column.— This column contains the date of the order for materials.

Invoice Number.— This column contains the number of the invoice of the firm who supplies the materials.

Invoice Date.— In this column is inserted the date of invoice.

Voucher Number.— In this column is inserted the number of the voucher or check with which the purchaser of

the material pays for the material in response to the invoice.

Voucher Date.— In this column is put the date of the voucher or check drawn by the purchaser to pay for the material.

FORM VI
CONSTRUCTION RECORD SHEET

FORM VI. CONSTRUCTION RECORD SHEET

ORDER NO.

Date

1. Started Preliminary Sketches
2. Completed Preliminary Sketches
3. Started Model
4. Completed Model
5. WORKING DRAWINGS

	No. of Sheets	Date Started	Date Com- pleted	Date Started	Date Com- pleted
6.	1				
7.	2				
8.	3				
9.	4				
10.	5				
11.	6				
12.	7				
13.	8				

14. Raw Material Date
 Ordered Order No.
15. Raw Material
 Received
16. Ordered Patterns Patterns Nos.
17. Received Patterns
18. Ordered Castings Casting Nos.
19. Received Castings
20. Ordered Machining Machining Shop Ticket No.
21. Received Machining
22. Ordered Assembly Assembly Shop Ticket No.
23. Received Assembly
24. Tested Test Ticket No.
25. Result of Test:
26.
27.
28.
29.
30.

FORM VI. CONSTRUCTION RECORD SHEET

The purpose of this construction record sheet is to have a complete record of the construction of the full-size machine embodying the invention or of the apparatus for its performance if it is a process. In the upper right-hand corner is the order number that has been attached to this particular invention to identify it throughout its history.

1 and 2. Insert here the date of the preliminary sketches found on such a form as No. II.

3 and 4. Insert here the date the model was made.

5, 6, 7, 8, 9, 10, 11, 12, and 13. Referring to Form IV, there should be inserted here the record of the working drawings.

14, 15, 16, 17, 18, 19, 20, 21, 22, and 23. In these various spaces it will be seen that the dates of ordering and receiving the raw materials; ordering the patterns, castings, etc.; doing the machining on the castings and assembling, together with the numbers of the corresponding material orders, pattern numbers, casting numbers, numbers on the tickets that will follow the job as it is machined, and the ticket of the assembly department, should be inserted here.

24. This should contain the date of the test and the test-ticket number showing the complete testing of the machine.

25, 26, 27, 28, and 29. These blanks should contain a

description of the test results, giving such data as may be necessary.

The complete record of the test will be found on the following Sheet VII.

FORM VII
TEST RECORD SHEET

FORM VII. TEST RECORD SHEET

ORDER NO.

Drawing No. Date.....

Test Ticket No.

1. Description :
2.
3.
4.
5.
6.
7.
8. Ready for Test: Date
9. Hand Tested: Date
10. Result:
11.
12.
13.
14.
15. Power Tested: Date
16. Result:
17.
18.
19.
20. Documents hereto attached:
21. (a) Photographs taken:
22. Views (1) No.
23. (2) No.
24. (3) No.
25. (4) No.
26. (b) Record of Tests
27. Who Present:
28. I,, swear that the fore-
29. going is true and correct to my personal knowledge.
30.
31. State of, County of ss.
32. On the day of, 192...,
33. before me, the subscriber, a Notary Public, in and for said
34. county, personally came and swore to the fore-
going facts as true and correct.

.....
Notary Public in and for
..... County.

FORM VII. TEST RECORD SHEET

This sheet is used to record in detail the result of the test. This is most important because it will constitute in many instances the reduction of the invention to practice and is possibly the most important date in a Patent-Office interference or in a suit on the patent.

In the upper right-hand corner is the order number which has followed the invention through its history. The drawing number and date can be found by referring to items 9 and 22 of Form IV.

The test-ticket number is also inserted here and is taken from the ticket which is usually attached to the machine in the course of its construction.

1, 2, 3, 4, 5, 6, and 7. A description of the machine and of the test to which it will be put is inserted here.

8. This is the date when it is ready for test.

9, 10, 11, 12, 13, and 14. If the machine was tested by hand and that was sufficient, the date and the result should be inserted here.

15, 16, 17, 18, and 19. If the invention was tested under its own power or by power applied, according to its nature, the date of the test and the result should be recorded here.

20, 21, 22, 23, 24, and 25. The photographs should be taken of the machine tested, with a suitable identification and description as set forth on the Photographic Record, Form IX.

26. The record of the test should be inserted here, such as speed, weights, production, power curves, etc.; in short, all things which may show the conditions under which the test took place and the results of it. Such documents should be dated and signed by the persons testing and witnessing the test.

27. Frequently, it happens that those who witness the test may be important as witnesses, either for or against the inventor. It is essential to have a record of those persons who were present and who had the advantage of seeing the test.

28 to 34. The person who makes out this sheet should swear to it as being correct, and the acknowledgment is taken before a notary public or other duly qualified officer for administering oaths.

FORM VIII

STATEMENT BY WITNESS OF TEST

FORM VIII. STATEMENT BY WITNESS OF TEST

ORDER NO.

1. I,, on the day of,
2. 192.., first being duly sworn, state as follows:
3. I was a witness to a test of on the day of
4., 192.., at A.M./P.M. in the City of
5. County of and State of
6. (a)
7.
8.
9.
10.
11.
12.
13.
14.
15.
16. State of }
17. County of } ss.
18. On the day of, 192.., before
19. me, a Notary Public, in and for said county, personally
20. came and swore to the foregoing facts
21. as true to the best of his knowledge and belief.
22.

Notary Public in and for
..... County,

* Describes test; what was seen; how close to device tested; who was present; conditions of test; result of test; any modifications to make test successful, etc.

FORM VIII. STATEMENT BY WITNESS OF TEST

In the upper right-hand corner is the order number which identifies the invention.

1 and 2. Insert here the name of the person witnessing the test and the date of the test.

3. A description of the machine is inserted in this blank.

4. The date on which the test took place should be inserted in these blanks, as well as the hour of test.

5. The place of the test is inserted here.

6 to 15. In this blank is inserted a description of the test and its result, giving all facts of importance.

16 to 20. Insert here the Notary Certificate for taking the acknowledgment of the witness of the test.



FORM IX
PHOTOGRAPH RECORD

FORM IX. PHOTOGRAPHIC RECORD FORM

ORDER NO.....^{a b}

1. Name of Device:
2. Who Took Photograph:
3. Place:
4. Date ^c:
5. Who Present:
6.
7.
8.

^a Print on face of an envelope to carry negative and print.

^b Put this number on a card on machine, etc., when being photographed.

^c Put date of taking photograph on negative at the time of taking, if possible. An autographic kodak is of great value for placing the date on the negative.

FORM IX. PHOTOGRAPH RECORD

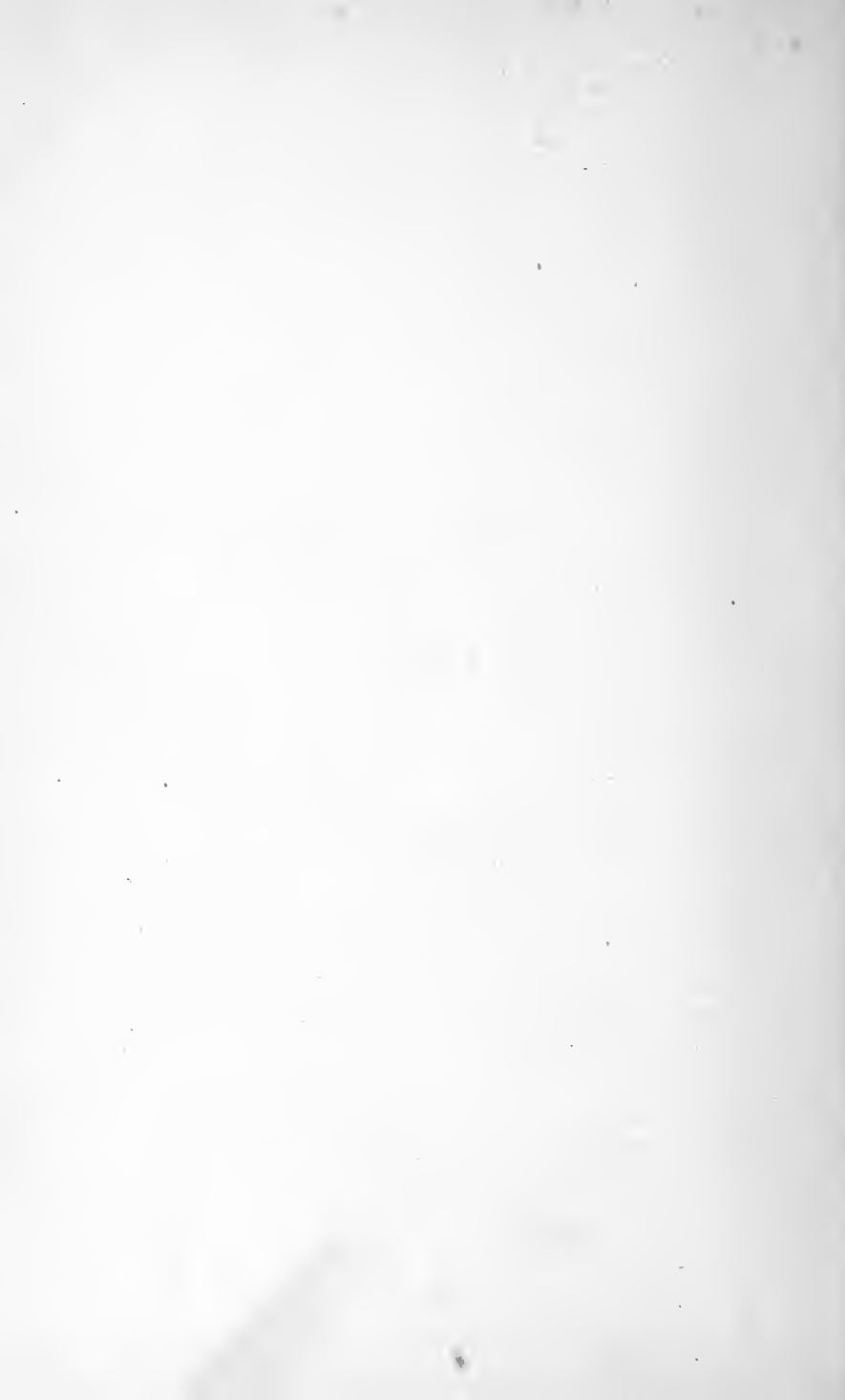
The purpose of this record is to preserve definite information as to the exact construction. Frequently the photograph will show in its background items of interest which can be used later to prove the exact date of taking the photograph. It will also show, in some instances, the persons who were present at the test and thus form a record of those facts.

In the upper right-hand corner is the order number identifying the invention which should be shown in the photograph when it is taken and should be put upon the negative itself at the time of taking the photograph, together with the date and place, if it does not show up automatically in the photograph itself.

1. This is the name of the device or invention.
2. The person who took the photograph enters his name here.
- 3 and 4. The place and date of taking the photograph are inserted here.

5. Those who are present should have their names inserted here.

It is very useful to have this form printed on the envelopes to contain the negatives and proofs in connection with this matter.



FORM X
PATENT DEPARTMENT RECORD

FORM X. PATENT DEPARTMENT RECORD

1. Name of Inventor Address of Inventor
 2. Title of Invention
 3. Received from Inventor ... 192..Execution ... 192..
 4. Sent to Patent Office 192.. Filed 192..
 5. Serial No. Preliminary Examination
Sheets of Drawings.
 6.
 7. Assignment of interest to Dated 192..
 8. Assignment forwarded 192.. Assignment
returned..... 192..
 9. Recorded 19.. Liber Page
 10. Delivered to Assignee,..... 192..
 11. Order No.
 12. Remarks:
 13.
 14.
 15.
 16.
 17.
 18.
 19.
 20.
 21. Allowed 192..
Final Fee Received 192..
 22. Six Months Expire 192..
Final Fee Forwarded 192..
 23. Patent Received 192..
Patent Office Receipt dated 192..
-
24. Patent No. Dated 192.. Del'd 192..

FORM X. PATENT DEPARTMENT RECORD

When the invention is sufficiently complete, either in the form of preliminary sketches or working drawings, or a model, it should be taken at once to a competent patent counsel. A record of this action can be kept on this form.

1. Insert the name of the inventor and his address.
2. The title of the invention is inserted here to define the class of invention to which it belongs.
3. The date it was received by the patent counsel is inserted in the first blank and the date on which the papers were signed to be forwarded to the Patent Office is inserted in the second blank.
4. The date of sending to the Patent Office is inserted here and the date when the Patent Office received it and filed the application.
- 5 and 6. In these blanks should be inserted the serial number which the Patent Office assigns to the application, whether or not a preliminary examination (made prior to filing the application) had been made in the Patent Office to determine whether any one else had probably patented the same thing for which a patent had been issued; and the number of sheets of drawings with some description of the figures and views.
7. If any or all of the interest in the invention has been transferred, the proportion of the interest and the date of transfer should be inserted in these blanks.

8. This document affecting the title to the invention should be recorded in the Patent Office, and the date of sending it forward, and of receiving it back should be inserted in these blanks.

9. The Patent Office will record it in its records; and that place of record and date will show on the face of the assignment when it is returned to the solicitor or assignee.

10. The date of delivery of this assignment to the person to whom the invention has been assigned can be recorded here also.

11. This is the order number which has followed the invention through its history.

12 to 20. Any miscellaneous data relative to the progress of the invention and its history in the Patent Office, together with a list of the patents cited against it, should be inserted here.

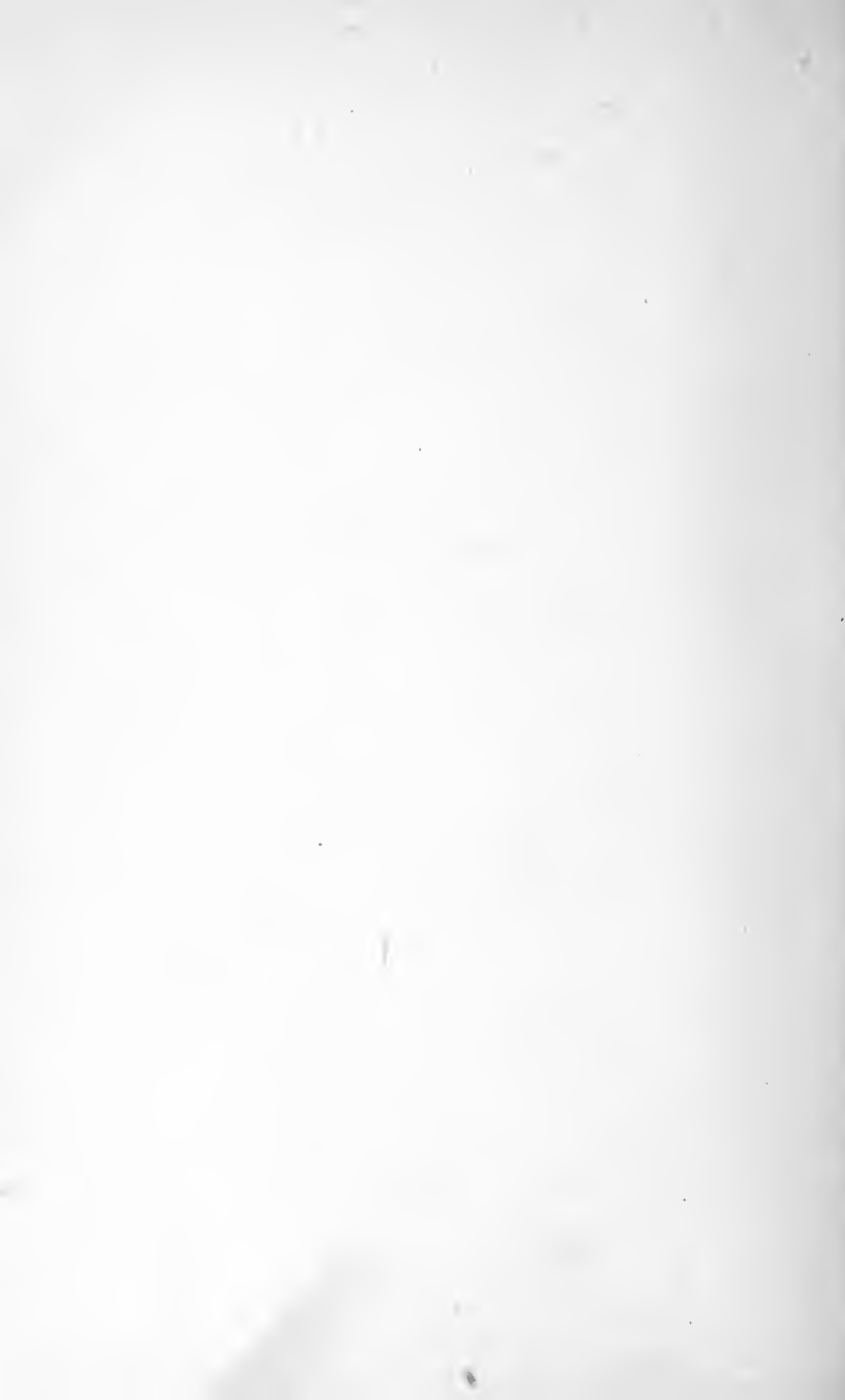
21. When the application is allowed, the date of its allowance should be entered in this blank. If the final fee is received from another, the date of receiving this final fee should be recorded here. This fee must be paid before the patent will issue.

22. There are six months within which to pay this final fee from the date on which the application is allowed by the Patent Office. This date, when the six months expire, should be inserted in the blank here in order to direct attention to the time within which the final fee must be paid and that the six months may not expire before the fee is paid. The fee should be paid, however, promptly, and the case gotten out of the Patent Office at the earliest practicable moment. There is also a blank in this line for

recording the date when this final fee was forwarded to Washington.

23. When the formal patent grant is received, its date can be recorded here.

24. The number assigned to the patent, its date, and the time when it is delivered to another, can be inserted in this line.



FORM XI
FOLLOW-UP FORM

FORM XI. FOLLOW-UP FORM

I	2	3	4	5	6	7	8	9
Order No.	Title	Con- ceived	Dis- closed	First Sketch	Patent Appli- cation Started	Model	Drawings	
							Started	Completed

10	11	12	13	14	15	16
Ordered Material	Patterns	Castings	Machining	Assembly	Test	Commercial Pro- duction Started

FORM XI. FOLLOW-UP FORM

This form is a general one to keep track of the progress of making and protecting the invention.

Reading the columns from the left hand to the right will be seen the order number, the title of the invention, the date when the idea was formulated in the mind of the inventor, the date when he told others about it, the date of the preliminary sketches, the date when he took up the filing of his patent application with his patent counsel, the date of making a model which may either precede or succeed the sketches, the starting of the working drawings and their completion, the ordering of the material, the making of the patterns, the making of the castings, the machining, assembling, the testing, and the starting of commercial production.

This sheet can be used for keeping a record of a number of inventions, each one having its own order number and individual series of forms.

These records are made progressively as the events occur. In case of a Patent Office interference to determine who made the invention first and who is entitled to the patent, all of these dates must be properly proved. If a business-like record is kept in the first instance, this becomes very simple and success is assured if the inventor is entitled to it. If such records are not kept and the dates are noted at random, it frequently happens that important and valuable rights are entirely lost.

The very great expense attendant upon Patent Office interferences and upon patent litigation is caused primarily by the failure of the inventor and those who own the inventions neglecting to keep business-like records.

The records presented here are the fruit of many years of experience as counsel in a large number of Patent Office interferences and in patent litigation extending throughout the United States.

The great burden of expense, which may result from closely contested litigation is largely due to the fact that the simple precaution of making adequate records *at the time* has not been followed. This has been largely due to the fact that there have been no systematic business-like records presented in readily available form on which the inventor, or a corporation owning the invention, might record these essential facts. This set of forms is presented for that purpose. The essential particulars are included in them. They can be varied in their details to suit the individual needs as long as the essentials are retained.

FORM XII

PATENT LITIGATION RECORD

FORM XII. PATENT LITIGATION RECORD

1. Name of Patentee
2. Title of Invention
3. Date of Patent No. of Patent
4. Date when infringement was discovered
5. Name of Infringer Address.....
6. Date when Infringer Notified
7. Date of Settlement
8. Terms of Settlement
9. Date of Bringing Suit
10. Date of Settlement
11. Terms of Suit
12. Brought in United District Court in City of
State of
13. Name of Attorneys for Plaintiff
14. Address of Attorneys for Plaintiff
15. Name of Witnesses for Plaintiff
16.
17.
18.
19. Names of Witnesses for Defendant
20. Date of Trial of Case
21. Date of Decision by Court
22. What the Court decided

FORM XII. PATENT LITIGATION RECORD

This form is self-explanatory. It is inserted for the purpose of convenience in keeping a record of any litigation upon the issued patent.

Litigation should be avoided whenever possible. Every effort should be made to effect a settlement, even though it may not secure all that the inventor or his assignee may think due. It should be taken into consideration that even if the entire amount due is recovered, there must be deducted from it the expenses of litigation.

Consequently, a blank is inserted for the date of settlement before any litigation is started and a date of settlement after it is started. A happy compromise is the best issue out of litigation. Business friendships are too valuable to be disrupted by litigation if it is possible to avoid it. The bench and the bar both look with keen favor upon the elimination of litigation, contrary to the usual impression of the layman. The better the patent counsel, the more eager he will be for the interest of his client to compromise and settle the litigation, or to prevent it entirely whenever it is within his power to do so to the interest of his client.

This book is submitted with the hope that its educational value will result in enhancing respect for the patent law and that splendid system of encouraging and protecting inventions which has been evolved from the

constitution of the United States, the statutes, the decisions, and the procedure in the Patent Office, which system has so long been capably and ably administered by the various agencies of the Government.

CHAPTER III

PATENT INVESTIGATIONS

Money invested in any sort of patent property is money needlessly risked unless an investigation is made to see if the way is clear to acquire its full results. Infringements, anticipations rendering patents invalid, and other matters of similar character constantly cost inventors and manufacturers thousands of dollars by their failure to be fully advised of what the exact situation is as to their patents.

It should be clearly known whether the patent is valid. It should be known whether the articles manufactured pursuant to the patent will be an infringement of some other patent. It should be clearly known what has been done in the art for that particular field so as to know what portions of the field are open for improvements and what new things can be done. Unless this is known, it will be impossible for inventors and manufacturers to intelligently invent and to invent with safety; it will be impossible for them to know the extent of the field ahead which will justify them in spending large amounts of money for research and experiment. If the field is narrow, their expenditures should be limited correspondingly.

ANTICIPATION OF AN INVENTION

Before filing an application, if the subject matter is not too complicated, a preliminary survey or search should be made of the patents in the United States Patent Office to see if the same thing has already been done before. If it has, then the inventor or manufacturer may devote his attention to some other thing wherein the prospects of success are brighter.

The same is true of trade-marks. Before a trade-mark is adopted and sent out on the goods in interstate commerce, it is essential that a search be made to see if the particular trade-mark has already been adopted officially by some one else. A search by a competent person in the Patent Office records would reveal the true state of affairs.

A case recently arose of a manufacturer of rubber tires who adopted a trade-mark and a special tread, secured large capital, built his plant, put the trade-mark into his corporate name, advertised widely and started shipping his goods, only to discover that the trade-mark in which he had invested thousands of dollars was held by another, unknown to him. All this could have been avoided if his search had been made prior to plunging into the business without advice.

PURCHASE OF PATENTS

In purchasing patents or applications for patents, four important things must be considered as to which investigations should be made. These four important considerations are:

1. Would devices manufactured under the patent infringe any other patent?
2. Is the patent valid or has some one else done the same thing before, in exactly or substantially the same way?
3. Has the owner a real title to the patent which he can assign?
4. Is the patent infringed by the product of any other manufacturer?

INFRINGEMENT

One of the most useful investigations that can be made is that to determine whether devices made under a patent you are about to purchase would infringe any other patent. Frequently, manufacturers and others are attracted by a clever device and plunge into the manufacture of it without attention to anything but the commercial end of the business. The device makes a huge success only to be confronted with the fact that it is an infringement of some obscure patent, oftentimes held by a competitor for the very purpose of keeping competition such as this out of the field.

The only way to prevent such an unfortunate state of affairs is to make a patent investigation in the Patent Office. All unexpired patents which may have any bearing on the particular article in question must be examined, and those selected which, apparently, are closest. Then there must be a careful opinion rendered covering the question of infringement by this article of the various claims of these patents. A close comparison must be made between each claim of each patent and the article

to which it relates based upon a thorough understanding of the patents.

No manufacturer is safe in proceeding in the manufacture of any article unless such an opinion has been had. The opinion should state clearly in plain language exactly the reasons of the person rendering the opinion, why the claims of these patents are infringed or not infringed. While it takes technical skill and very great care to render such an opinion, yet the result should be so plain and so clear, with practical reasons given for the views set forth, that a layman can understand it and be guided by it.

The investigation to find the patents bearing on infringement must be made in the many classes of patents in the Patent Office. The Patent Office is divided off into 47 divisions (the Trade-Mark Division is the 48th) and each one of the divisions has a large number of classes under its jurisdiction. In the files of the Patent Office the patents are divided into classes and sub-classes, with key names for each class and key numbers. Those classes which are apparently pertinent must be examined and all collateral classes must be carefully examined. Not until the man who is making the search begins to repeatedly run across the same patents twice can he be certain that he is covering the ground so carefully and so extensively that no patent has escaped his attention.

The prior art of this character which is thus turned up is valuable not only on the question of infringement but valuable for other reasons. Some very excellent patents which would be of great importance to purchase may be disclosed. Often the inventor is not pushing the

patent commercially and would be glad to sell it at a reasonable price. Then too, these patents offer a large number of suggestions to the engineering and inventing departments of the manufacturer. They give a clear line on what competitors are doing and what patents they may have so that he may avoid running into their special fields.

VALIDITY OF THE PATENT

The validity of the patent you are about to buy is a matter of grave importance. It quite frequently happens that a patent that is very broad upon its face is either very limited or invalid entirely. It may be invalid due to ignorance on the part of the applicant who thought he was the first inventor, it may be invalid because the patent office made a mistake, or was careless in issuing the patent. Regrettable as that is, that may happen in all human institutions. There may be unknown foreign or domestic publications which disclose the same subject matter and thereby invalidate the patent. There may be an obscure prior public use which may invalidate the patent. All of these things should be checked up very carefully.

In determining the validity of the patent the first step is to make a thorough search of the prior patent art to see if any of the disclosures of those patents in the same field are the same as the disclosure set forth and claimed in the patent you are about to buy. If the same thing has been done before or a part of it has been done before, then the patent may be invalid entirely or its scope limited quite closely.

A patent purports to cover a certain territory. Its

purpose is to claim broadly certain kinds of machinery, for instance. On its face it may cover the entire field, but the patent has to be interpreted in the light of other patents that have gone before which may narrow its scope. The result of the search will show exactly what is the territory it can monopolize.

A careful search should be made of the foreign art. Copies of these foreign patents will be found in the United States Patent Office and especially helpful are those copies found in the files of the examiner in a division. Each division has a file of foreign patents that is most helpful to it. With the permission of the examiner, these files may be examined and very valuable material discovered.

The technical library of the Patent Office and the Library of Congress are fruitful sources of information. Very frequently patents are defeated or narrowed by the disclosures of advertisements, trade notices, etc., in the trade journals, catalogues, and publications on file in those libraries.

TITLE

Patent property is like real estate. Its title can and should be registered.

A record of the transfer of patent property is kept in the Patent Office at Washington where all documents of transfer are sent to be recorded. A careful survey and search of these records must be made to determine exactly what title is in the person who is endeavoring to sell the patent. Unless this is done you may buy either no interest at all or a lesser interest through fraud or mistake on the part of the seller.

INFRINGEMENT BY OTHERS

The value of a patent is often determined by how powerful a weapon it will be in the struggle with competitors. Frequently, it is of great advantage to buy a patent which may relieve you of infringement and put you in a position of having your competitor infringe your patent. A patent which is infringed is a strong commercial weapon and pushes a manufacturer into a position, according to the strength of his patent, of dominating his industry. A whole group of patents thus intelligently bought may readily give a monopoly which will enable the manufacturer to establish a fine, growing organization on a substantial basis during the life of the patents so that when the patents begin to expire commercial supremacy will have been established and the position of the manufacturer commercially will be made impregnable.

INVESTIGATIONS BEFORE INVENTION

Some of the great inventors, like the Wright brothers, have adopted the plan of investigating carefully and thoroughly everything in the literature and in the articles dealing with their particular field before starting out to invent. They have realized that it is useless to attempt an invention until it is pretty well known what has been done before them. Otherwise, you may simply invent something some one else has already discovered before you — and the effort is wasted.

Start where the past has left off, from that point plunge on.

Great industrial institutions like General Electric,

Eastman Kodak, Westinghouse, etc., have been developed to a greater or less extent by industrial research. The practical profits on seemingly theoretical scientific lines have been very satisfactory. Patent research should be coupled with industrial research, with the result that the fruits of the industrial research will be insured to the discoverer. In other words, once having discovered something new, whenever possible under the laws, it should be protected and preserved for the purposes of the business.

Another phase of the practical patent research work is to go into the field before the engineers start and make a comprehensive survey of everything that has been done in the field — a thorough investigation in every important country of all the patents, literature, and technical information. The engineers should then start where the patent research has left off, so that there will be no waste effort in the industrial research department. The gathering together of all the information of this character and seeing to it that it is properly recorded and digested results in a firm acquiring a permanent fund of scientific information so that its inventors may have a storehouse upon which to draw for suggestions and ideas in the development of the firm's products. What the owners of the plant have thus paid for, when once collected, is preserved for the future benefit of the business.

The difficulty with most patent-research work and patent work generally is that it is conducted on too sporadic and haphazard a basis. It should be conducted systematically so that it covers all phases of the entire field in which a firm is operating. If this is done, the

monopoly will be perfect, complete, and secure, with the result that competitors are absolutely excluded from the particular field in which the firm is operating.

Industrials following this policy have been able, by a constant look-out for new patents, to add to their holdings and to maintain the monopoly of the field. It is rare that one patent is able to dominate an entire field.

The result of the above is :

1. A complete monopoly in the field desired.
2. The development of the newest creations without loss of time and money by doing what has already been done.
3. The building up of a permanent supply of information without having it lost by being carried in the individual minds of employees.

This results in protection both internally and externally and insures genuine leadership.





